

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DENNIS MONTGOMERY and the
MONTGOMERY FAMILY TRUST,

Plaintiffs,

v.

ETREPPID TECHNOLOGIES, LLC;
WARREN TREPP; and the UNITED
STATES DEPARTMENT OF DEFENSE,

Defendants.

AND ALL RELATED MATTERS.

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

ORDER

On September 25, 2006, Defendant, United States Department of Defense “(DoD)” filed a Motion for Protective Order (Doc.#83, 3:06-CV-00056-PMP-VPC) and (Doc.#51, 3:06-CV-00145-PMP-VPV) to prevent disclosure of information that could harm the national security interests of the United States.

DoD’s motion for protective order asserts a claim of military and state secrets privilege and is supported by the September 19, 2006, unclassified Declaration of John D. Negroponte, formerly Director of National Intelligence of the United States, and a classified declaration reviewed by the Court in camera on March 15, 2007. Defendant DoD’s motion, however, has not been fully briefed by the parties to this action.

On September 26, 2006, a status conference was conducted before The Honorable Valerie Cooke, United States Magistrate Judge, at which Magistrate Judge

1 Cooke ordered discovery stayed and directed the parties to complete briefing on Defendant
2 DoD's motion for protective order, as well as a separate motion for protective order,
3 (Doc.#74) filed September 19, 2006, on behalf of Defendant eTreppid, Technologies, LLC
4 ("eTreppid").

5 Defendant, eTreppid has not filed a response to DoD's motion for protective
6 order. On October 31, 2006, Montgomery filed a request to file an oversized brief, request
7 for judicial notice in support of opposition to DoD's motion for protective order, and a
8 notice of lodging of in camera ex parte material. On November 2, 2006, Magistrate Judge
9 Cooke entered an Order (Doc.#59) directing that Montgomery file his opposition to DoD's
10 motion for protective order, (as well as his opposition to eTreppid's motion for protective
11 order)¹ under seal by hand delivering the opposition to the Clerk of Court for submission to
12 the Court for in camera review to determine whether it could be electronically imaged
13 and/or unsealed. Magistrate Judge Cooke's order further provided that no other parties to
14 this action shall be provided copies of the documents submitted for in camera review by
15 Montgomery.

16 On November 6, 2006, Montgomery filed under seal a response to DoD's motion
17 for protective order; a Sealed Declaration of Dennis Montgomery filed in camera, exparte;
18 and request for denial of the motion; or alternatively, dismissal of both cases under the
19 states secrets privilege. On November 28, 2006, Ronald Logar, counsel for Montgomery
20 submitted for the Court's in camera review his cover letter and accompanying Declaration
21 of Dennis Montgomery in support of Montgomery's oppositions to DoD's and eTreppid's
22 motions for protective orders. As Judge Cooke ordered, Montgomery filed the materials

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24 ¹ At the status conference conducted jointly by Magistrate Judge Cooke and the
25 undersigned on March 15, 2007, the parties were advised that the undersigned would address
26 Defendant DoD's motion for protective order based upon military and state secrets and that
Magistrate Judge Cooke would address eTreppid's motion for protective order based upon
privileged trade secrets.

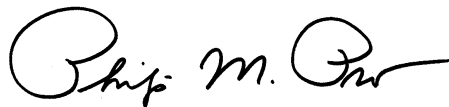
1 under seal, and submitted them for in camera review and did not serve them on DoD or
2 eTreppid. As a result, DoD has not had the opportunity to complete briefing on its motion
3 for protective order by filing a reply memorandum. This needs to be rectified to enable the
4 Court to resolve Defendant DoD's pending motion for protective order on the ground of
5 military and state secrets privilege.

6 IT IS THEREFORE ORDERED that Montgomery shall not later than March 30,
7 2007, serve on DoD copies of the sealed filings and in camera submissions tendered to the
8 Court by Montgomery on October 31, 2006, November 3, 2006, and November 28, 2006.
9 Said documents shall remain under seal pending response by DoD and further Order of this
10 Court.

11 IT IS FURTHER ORDERED that to the extent eTreppid intends to file a
12 response in opposition to DoD's Motion for Protective Order, it shall do so on or before
13 April 3, 2007.

14 IT IS FURTHER ORDERED that DoD shall file a reply memorandum in support
15 of its Motion for Protective Order on or before April 23, 2007.

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17 DATED: March 21, 2007.

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20 PHILIP M. PRO
21 United States District Judge
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